

This Opinion is not a
Precedent of the TTAB

Mailed: August 15, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Craig S. Copeland

Serial No. 90042595

Erik M. Pelton and Olivia M. Muller of Erik M. Pelton & Associates,
for Craig S. Copeland.

Philip Liu, Trademark Examining Attorney, Law Office 109,
Michael Kazazian, Managing Attorney.

Before Wolfson, Heasley, and Coggins,
Administrative Trademark Judges.

Opinion by Heasley, Administrative Trademark Judge:

Applicant, Craig S. Copeland, seeks registration on the Principal Register of the mark EVOLVE LIFE SYSTEMS (in standard characters, with “SYSTEMS” disclaimed) for services ultimately identified as “Counseling in the field of personal development, namely, self-improvement, self-fulfillment, and interpersonal communication; Providing a website featuring information regarding self-improvement; Providing information in the field of self-improvement; Providing

information in the field of personal development, namely, self-improvement, self-fulfillment, and interpersonal communication” in International Class 45.¹

The Trademark Examining Attorney has refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant’s mark, as used in connection with these services, so resembles the registered mark EVOLVED LYFE (in standard characters, with “LIFE” disclaimed) for “life coaching services in the field of law of attraction and manifestation,” in International Class 41, as to be likely to cause confusion, to cause mistake, or to deceive.²

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal proceeded.

I. Likelihood of Confusion

Section 2(d) of the Trademark Act provides that an applied-for mark may be refused registration if it:

[c]onsists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive....

¹ Application Serial No. 90042595 was filed on July 8, 2020, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based on Applicant’s claim of first use anywhere and in commerce since at least as early as August 1, 2018.

Citations to the prosecution file refer to the USPTO’s Trademark Status & Document Retrieval (“TSDR”) system and identify the documents by title, date, and page in the downloadable .pdf version. References to the briefs and other materials in the appeal record refer to the Board’s TTABVue online docketing system.

² Registration No. 5484835 issued on the Principal Register on June 5, 2018.

15 U.S.C. § 1052(d).

The fundamental purposes underlying Section 2(d) are to prevent consumer confusion as to source and to protect trademark owners from damage caused by registration of confusingly similar marks. *Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 224 USPQ 327, 331 (1985); *Qualitex Co. v. Jacobson Prods. Co.*, 514 U.S. 159, 34 USPQ2d 1161, 1163 (1995); *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 566 (CCPA 1973) (“*DuPont*”).

To determine whether there is a likelihood of confusion between the marks under Section 2(d), we analyze the evidence and arguments under the *DuPont* factors. *DuPont*, 177 USPQ at 567, cited in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 113 USPQ2d 2045, 2049 (2015). We consider each *DuPont* factor for which there is evidence and argument. *In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1161-62 (Fed. Cir. 2019). “Not all of the *DuPont* factors are necessarily relevant or of equal weight in a given case, and any one of the factors may control a particular case. ... Only the *DuPont* factors of significance to the particular mark need be considered in the likelihood of confusion analysis.” *Tiger Lily Ventures Ltd. v. Barclays Cap. Inc.*, 35 F.4th 1352, 2022 USPQ2d 513, *7 (Fed. Cir. 2022) (internal citation and punctuation omitted). “In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods or services.” *Chutter, Inc. v. Great Mgmt. Grp., LLC*, 2021 USPQ2d 1001, *29 (TTAB 2021) (citing *In re Chatam Int’l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945-46 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976)).

A. Relatedness of the Services

The second *DuPont* factor concerns the “similarity or dissimilarity and nature of the goods or services as described in an application or registration....” *DuPont*, 177 USPQ at 567. A proper comparison “considers whether ‘the consuming public may perceive [the respective goods or services of the parties] as related enough to cause confusion about the source or origin of the goods and services.’” *In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1086 (Fed. Cir. 2014) (quoting *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002)).

Registrant’s services, “life coaching services in the field of law of attraction and manifestation,” entail advising clients on the law of attraction, a new age “belief that thinking about something attracts it and causes it to manifest in your life.”³ These services are encompassed by Applicant’s more broadly phrased “counseling in the field of personal development, namely, self-improvement, self-fulfillment,” because the function of life coaching is to “help[] people make decisions, set and reach goals, or deal with problems,”⁴ which is one of the goals of personal development counseling. *See In re Info. Builders Inc.*, 2020 USPQ2d 10444, *3 (TTAB 2020) (registrant’s recited services encompassed by applicant’s).

³ YourDictionary.com/law-of-attraction accessed 8/8/2022. “The Board may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), *aff’d*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including online dictionaries that exist in printed format or regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006).” *Int’l Dairy Foods Ass’n v. Interprofession du Gruyère and Syndicat Interprofessionnel du Gruyère*, 2020 USPQ2d 10892, * 17 n. 115 (TTAB 2020).

⁴ Merriam-Webster.com/dictionary/life%20chach accessed 8/8/2022.

The Examining Attorney cites six use-based third-party registrations, each reciting both sorts of services under a single mark.⁵ As a general proposition, third-party registrations that cover services from both the cited registration and an application are relevant to show that the services are of a type that may emanate from a single source under one mark. *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002); *Ricardo Media Inc. v. Inventive Software, LLC*, 2019 USPQ2d 311355, *2 (TTAB 2019). Applicant does not dispute this evidence, or the similarity of the services. *See Primrose Ret. Cmtys., LLC v. Edward Rose Senior Living, LLC*, 122 USPQ2d 1030, 1033 (TTAB 2016) (“Conspicuously absent from this discussion, however, is the issue of the similarity of the services.”).

We conclude that the services are legally identical. *Info. Builders*, 2020 USPQ2d 10444, at *3; *see also Anthony’s Pizza & Pasta Int’l Inc. v. Anthony’s Pizza Holding Co.*, 95 USPQ2d 1271, 1279 (TTAB 2009), *aff’d*, 415 F. App’x 222 (Fed. Cir. 2010).

The second *DuPont* factor thus weighs in favor of finding a likelihood of confusion.

B. Weakness of EVOLVE LIFE Formatives for Life Coaching

Before we turn to the similarity of the marks, we consider the strength of the cited mark, as that will affect the scope of its protection. A mark’s strength is measured by its conceptual strength (that is, its distinctiveness) and its commercial strength (its consumer recognition in the marketplace). *In re Chippendales USA, Inc.*,

⁵ Reg. nos. 4236612, 4711114, 4866825, 5012056, 5791728, 6408166, Dec. 9, 2021 Office Action (response to request for reconsideration) at 3-20.

622 F.3d 1346, 96 USPQ2d 1681, 1686 (Fed. Cir. 2010) *cited in In re Morinaga Nyugyo K.K.*, 120 USPQ2d 1738, 1745 (TTAB 2016).

For likelihood of confusion purposes, a mark's strength "varies along a spectrum from very strong to very weak." *Joseph Phelps Vineyards, LLC v. Fairmont Holdings, LLC*, 857 F.3d 1323, 122 USPQ2d 1733, 1734 (Fed. Cir. 2017) (citing *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1694 (Fed. Cir. 2005)). The weaker a Registrant's mark is, conceptually or commercially, the closer an applicant's mark can come "without causing a likelihood of confusion and thereby invading what amounts to its comparatively narrower range of protection." *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1674 (Fed. Cir. 2015) *quoted in Primrose v. Edward Rose*, 122 USPQ2d at 1036. "The expressions 'weak' and 'entitled to limited protection' are but other ways of saying ... that confusion is unlikely because the marks are of such non-arbitrary nature or so widely used that the public easily distinguishes slight differences in the marks under consideration as well as differences in the goods [or services] to which they are applied, even though the goods [or services] of the parties may be considered 'related.'" *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108, 109-10 (CCPA 1974).

"The sixth *du Pont* factor requires us to consider evidence pertaining to the number and nature of similar marks in use on similar services; given the evidence of record, we find that this factor plays a weighty role in our analysis." *Primrose v. Edward Rose*, 122 USPQ2d at 1033. In this case, we presume the cited registered mark, EVOLVED LYFE, is inherently distinctive—at least suggestive—because it is

registered on the Principal Register, 15 U.S.C. § 1057(b), even though the disclaimer of “LIFE” tacitly admits that the word is not inherently distinctive. *Sock It to Me, Inc. v. Aiping Fan*, 2020 USPQ2d 10611, *10 (TTAB 2020). Nonetheless, we may acknowledge the relative weakness of a registered mark in the course of a *DuPont* analysis. *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1517-18 (TTAB 2016).

The dictionary and third-party evidence in this case indicate that the formative EVOLVE LIFE—appearing as EVOLVED LYFE in the cited registered mark—is both conceptually and commercially weak in the field of life coaching. To “evolve” means “to change or develop slowly often into a better, more complex, or more advanced state: to develop by a process of evolution.”⁶ “Life” is disclaimed in the cited registration, despite its misspelling as “LYFE,” because it refers to life coaching.⁷ “Life,” as used in this sense, refers to the “way or manner of living” of each person who receives life coaching.⁸ Registrant’s combination, EVOLVED LYFE, suggests a desired result of life coaching services: to help one evolve for the better, progressively improving the trajectory of one’s life.

This suggestive meaning is reinforced by thirty-five (35) third-party websites Applicant has adduced in the course of prosecution.⁹ Applicant’s following table sets

⁶ Merriam-Webster.com, April 14, 2021 Response to Office Action at 24.

⁷ The TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMPEP) § 1213.08(c) (July 2022) provides that “If a mark comprises a word or words that are misspelled but nonetheless must be disclaimed, the examining attorney must require disclaimer of the word or words in the correct spelling.”

⁸ Merriam-webster.com/dictionary/life# accessed 8/9/2022 (Life: “a way or manner of living”).

⁹ Applicant’s April 14, 2021 Response to Office Action, at 16-17, 34-95, exs. C-R; Applicant’s Nov. 18, 2021 Response to Office Action (request for reconsideration) at 12-14, 126-205, exs. S-AK.

forth the logos from those websites, all but two¹⁰ of which offer the same or similar services as Registrant:

	
Evolve LIFE Coach	
	
	Evolve Life Coaching
	
EVOLVE Online Coaching	
	
	

¹⁰ EVOLVE LIFE CENTER offers psychotherapeutic therapy for trauma, and EVOLVE LIFE CENTERS offers counseling for drug and alcohol abuse, which are different in kind from traditional life coaching, as discussed more fully below.

 <p>EVOLVE Life Coach Delivering Value</p>	
	
<p>EVOLVE LIFE SKILLS</p>	
	
	
<p>Evolve Your Life</p>	
<p>evolve with TASH</p>	
<p>EVOLVE AND RISE UP</p>	
<p>Evolve With Kristie Find clarity and attract your desires!</p>	
<p>EVOLVE</p>	

11

The following representative examples of third-party uses excerpted from the web pages of the marks in the above table convey this suggestive meaning:

¹¹ Applicant's brief, 6 TTABVUE 17-19.

- **Evolve Personal Growth:** “The best online growth platform to develop yourself in the right direction.”¹²
- “For greater success and for fulfillment in all aspects of your life, people come to **EVOLVE Life Coach.**”¹³
- “**Evolve Life Skills** —Experience The Transformation” “I will work with you closely to understand what you REALLY WANT” “I will help you set goals that YOU WILL be motivated to ACHIEVE.”¹⁴
- “**Evolve Your Life Health Coaching**” “Evolve Your Mind, Evolve your life” “Week 3: Manifesting/Meditating/Affirmations”¹⁵
- **Evolve Life Coaching:** “Ultimately, the goal is for clients to evolve and become happier and more fulfilled than ever before.”¹⁶
- **Evolve Online Coaching:** “Evolve into the best and highest version of yourself.”¹⁷

[S]uch evidence of third-party use is relevant to show that a term “may have a normally understood and well-recognized descriptive or suggestive meaning, leading to the conclusion that that [term] is relatively weak,” and “can show that customers have been educated to distinguish between different marks on the basis of minute distinctions.”

Primrose v. Edward Rose, 122 USPQ2d at 1036 (quoting *Jack Wolfskin Ausrüstung Fur Draussen GmbH v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1136 (Fed. Cir. 2015) and *Juice Generation*, 115 USPQ2d at 1674).

Applicant adds eight use-based third-party registrations for EVOLVE-formative

¹² Evolvwise.com, Nov. 18, 2021 Response to Office Action (request for reconsideration) at 139, ex. U.

¹³ Aprilgant.com, *id.* at 132, ex. S.

¹⁴ EvolveLifeSkills.com, *id.* at 149, ex. W.

¹⁵ EvolveYourLife.teachable.com, *id.* at 172, ex. AB.

¹⁶ Evolve-life-coaching.business.site, April 14, 2014 Response to Office Action at 55, ex. H.

¹⁷ StellarLifeCoaching.com/evolve/, *id.* at 72, ex. M.

marks, the following five of which we find relevant¹⁸:

Evolve Up	5797700	Class 41: Education services, namely, providing live and on-line classes, workshops, seminars, conference series, and panel discussions in the field of business, leadership, corporate culture, corporate responsibility, organizational assessment tools, children's education, life skills, emotional intelligence, and wellness
Link2Evolve	5672925	Class 41: Life coaching services in the field of personal success and fulfillment
Journey Evolution Educate Engage Evolve	5493339	Class 41: Providing personal health and life coaching services via non-downloadable webinars, online courses, video and telephonic consultations and conducting seminars
Zoë Soleil Emerge. Evolve. Transform. Transcend.	4884872	Class 41: Life coaching services in the field of education, sports, and veterans affairs
Resolve, Involve, Evolve	5314427	Class 41: Educational services, namely, providing courses in personal development; personal development training

These third-party registrations are relevant to show conceptual weakness, rather than commercial weakness. “Third-party registrations used in this manner are not evidence that customers are accustomed to seeing the use of other, similar, marks in the marketplace, but rather evidence that a term is suggestive or descriptive of the relevant goods or services.” *Morinaga*, 120 USPQ2d at 1745-46, *quoted in Sock It to Me v. Aiping Fan*, 2020 USPQ2d 10611, at *9.

The Examining Attorney argues that Applicant’s dictionary definitions of “EVOLVE” as “to develop” or “change one’s life in a more beneficial manner” do not allude to the nature of the services.¹⁹ We disagree. EVOLVE[D] suggests a desired result of life coaching services: helping to progressively improve one’s life—i.e., one’s

¹⁸ Applicant’s brief, 6 TTABVUE 22-23; Nov. 18, 2021 Response to Office Action at 206-14.

¹⁹ Examining Attorney’s brief, 8 TTABVUE 17.

“way or manner of living.”²⁰ See *In re FabFitFun, Inc.*, 127 USPQ2d 1670, 1675 (TTAB 2018) (“based on the totality of the evidence, including the dictionary definition, we find that the shared phrase SMOKIN' [SMOKING] HOT is somewhat weak in that it at best suggests a desired result of using the identified cosmetics...”). Dictionary definitions “represent an effort to distill the collective understanding of the community with respect to language” *In re Boulevard Entm't Inc.*, 334 F.3d 1336, 67 USPQ2d 1475, 1478 (Fed. Cir. 2003). Consistent with these definitions, the word’s meaning would be readily understandable to consumers of life coaching services.

The third-party registrations listed in the table above are few in number and most contain significantly different wording, aside from sharing the term EVOLVE. See *In re Embiid*, 2021 USPQ2d 577, *38n. 57 (TTAB 2021) (“the LIVE THE PROCESS, RESPECT THE PROCESS, and WE ARE THE PROCESS marks differ from the involved TRUST THE PROCESS marks, which reduces their potency as evidence of conceptual weakness.”). They thus carry little weight, standing alone; but together with the dictionary evidence, they help confirm the suggestive meaning of EVOLVE[D] in connection with life coaching services. And taken together with the third-party use evidence, the third-party registrations “may be considered to demonstrate the meaning of a word which comprises the mark, or a portion thereof, to show that there is a well-known and commonly understood meaning of that word and that the mark has been chosen to convey that meaning.” *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991) quoted in *Sock It to Me v. Aiping Fan*, 2020 USPQ2d

²⁰ Merriam-webster.com/dictionary/life# accessed 8/9/2022 (Life: “a way or manner of living”).

10611, at *9.

The Examining Attorney acknowledges that “[e]vidence of widespread third-party use of similar marks with similar goods and/or services ‘is relevant to show that a mark is relatively weak and entitled to only a narrow scope of protection’ in that particular industry or field.”²¹ He notes that some instances, such as “EVOLVE COACHING” or “THE EVOLVE CENTER,” omit “LIFE,” while others include it as part of “LIFE COACH” or “LIFE COACHING,” a phrase that describes the nature of the services.²² Other instances, such as “EVOLVE WITH VELLA”, “EVOLVE YOUR LIFE”, “EVOLVE WITH TASH”, “EVOLVE AND RISE UP”, and “EVOLVE WITH KRISTIE,” are all unitary phrasings that differ from Applicant’s and Registrant’s marks; as such, he contends, they do not prove that EVOLVED LYFE is commercially weak. Still other instances, such as “EVOLVE LIFE CENTER” and “EVOLVE THERAPEUTIC CENTER,” provide differing services, such as medical counseling and therapy for trauma.²³ After discounting the unpersuasive instances, he contends, the remaining third-party uses fall short of the “ubiquitous” or “considerable” use of the mark components found in cases like *Juice Generation*, *Jack Wolfskin*, or *In re Broadway Chicken*, 38 USPQ2d 1559 (TTAB 1996) (more than 500 entities providing restaurant, bar, or related services under a trade name containing the term BROADWAY).²⁴ Thus, he concludes, the evidence does not show that Registrant’s

²¹ Examining Attorney’s brief, 8 TTABVUE 14 quoting *Omaha Steaks*, 128 USPQ2d at 1693.

²² Examining Attorney’s brief, 8 TTABVUE 14-15.

²³ Examining Attorney’s brief, 8 TTABVUE 15.

²⁴ Examining Attorney’s brief, 8 TTABVUE 16.

mark is commercially weak.

On the whole, though, we believe the third-party use evidence shows that EVOLVE LIFE formatives are commercially weak in the field of life coaching. In each of the third-party website uses, EVOLVE or EVOLVED retains its ordinary dictionary meaning: “to change or develop slowly often into a better, more complex, or more advanced state: to develop by a process of evolution.”²⁵ And the term LIFE retains its ordinary dictionary meaning: “way or manner of living.” The combination EVOLVE[D] LIFE is attractive to many life coaches, and commonly adopted to convey the suggestive connotation that life coaching will help its recipients evolve for the better. *See Sports Auth. Mich. Inc. v. PC Auth. Inc.*, 63 USPQ2d 1782, 1798 (TTAB 2002) (“[W]e find the numerous registrations and web site uses probative evidence that marks using a descriptive or suggestive term followed by the term ‘Authority’ are attractive to many businesses, are adopted to convey the very suggestive connotation that the adopting entity is an expert or authority in the particular field in which it is engaged....”) *quoted in Promark Brands Inc. & H.J. Heinz Co. v. GFA Brands, Inc.*, 114 USPQ2d 1232, 1244 (TTAB 2015).

All the third-party websites use “EVOLVE[D]” in this sense. Some omit “LIFE,” but a significant number—such as EVOLVE LIFE MASTERY, EVOLVED LIFE DESIGN, and THE EVOLVED LIFE—include it. Some include “LIFE” as part of the generic phrase “LIFE COACHING”, but the consuming public is unaware that the phrase could be disclaimed. *Cf. Juice Generation*, 115 USPQ2d at 1676 (public

²⁵ Merriam-Webster.com, April 14, 2021 Response to Office Action at 24.

unaware of disclaimers). And others—such as EVOLVED LIFE DESIGN and EVOLVE LIFE SKILLS—separate LIFE from COACHING. Some use “EVOLVE” with “LIFE” as part of larger phrases, such as EVOLVE YOUR LIFE, but the consuming public is still likely to perceive the same message of ascending toward a better life.

Some address more serious life issues. As noted, EVOLVE LIFE CENTER and EVOLVE LIFE CENTERS offer services different in kind from traditional life coaching,²⁶ so these two third-party uses have not been considered. *Omaha Steaks*, 128 USPQ2d at 1694 (“[T]he controlling inquiry [under the sixth DuPont factor] is the extent of third-party marks in use on ‘similar’ goods or services.”). On the other hand, EVOLVE THERAPEUTIC CENTER offers life coaching separate from medical counseling, according to its website: “Coaching is a service that is utilized by a wide variety of individuals. It differs from counseling in that it is focused on the future and the action steps that are required to move you toward a more fulfilling life.”²⁷ It therefore will be considered as a third-party use of EVOLVE in connection with the same or similar services.

Applicant has demonstrated multiple third-party variations on the term EVOLVE[D] LIFE in connection with life coaching services. Admittedly, this number is less than the five hundred-plus third-party examples in *Broadway Chicken*, 38 USPQ2d at 1560-61. But the number is comparable to *Juice Generation*, 115 USPQ2d

²⁶ Ex. E, EvolveLifeCenters.com, ex. G, EvolveLifeDreamKids.com, April 14, 2021 Response to Office Action at 43-46, 50-52.

²⁷ Ex. AA, EvolveTherapeuticCenter.com, Nov. 18, 2021 Response to Office Action (request for reconsideration) at 169-70.

at 1674 (PEACE and LOVE weak terms when used in connection with juice and restaurant services due to 26 third-party registrations and uses of marks containing the words “peace” and “love” used for similar goods and services). *See also ProMark Brands v. GFA Brands*, 114 USPQ2d at 1244-45 & n. 57 (14 third-party registrations and approximately a dozen websites and a dozen food packages, plus cookbook titles, showing common use of the word SMART in the consumer packaged food goods industry); *Knight Textile Corp. v. Jones Inv. Co., Inc.*, 75 USPQ2d 1313, 1312, 1316 (TTAB 2005) (23 third-party registrations owned by 21 different owners including the word ESSENTIALS for clothing items) *cited in Rocket Trademarks Pty Ltd. v. Phard S.p.A.*, 98 USPQ2d 1066, 1076 (TTAB 2011) (“there is a degree of weakness in the term ELEMENT(S), when used as a trademark, or as a component part thereof, in connection with clothing items.”).

On the whole, then, the third-party websites establish, and the dictionary definitions and third-party registrations corroborate, that it is common for life coaches to adopt variations of EVOLVE[D] LIFE, which convey a common, suggestive commercial impression: that life coaching services help one evolve toward a better life. In view of the evidence, we find that the cited mark falls on the lower end of the “spectrum from very strong to very weak,” *Joseph Phelps Vineyards*, 122 USPQ2d at 1734. Consumers are likely to be accustomed to encountering the terms EVOLVE[D] LIFE in connection with life coaching services. When they encounter these common terms, they are likely to attribute to it its suggestive meaning: that the life coaching services are designed to help “evolve” their lives. They are not likely to assume that multiple life coaches using variations of EVOLVE[D] LIFE are affiliated in some way,

as they “have been educated to distinguish between different marks on the basis of minute distinctions.” *Juice Generation*, 115 USPQ2d at 1674 (quoting 2 MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 11:88 (4th ed. 2015) (quoting *Standard Brands, Inc. v. RJR Foods, Inc.*, 192 USPQ 383 (TTAB 1976))).

Consequently, the sixth *DuPont* factor weighs against finding a likelihood of confusion.

C. Comparison of the Marks

In this case, the distinctions between the two marks are indeed minute. Again, the registered mark is EVOLVED LYFE, with “LIFE” disclaimed, and Applicant’s mark is EVOLVE LIFE SYSTEMS, with “SYSTEMS” disclaimed.

Under the first *DuPont* factor, we must compare the marks in their entireties, taking into account their appearance, sound, connotation and commercial impression. *DuPont*, 177 USPQ at 567; *Palm Bay Imps. v. Veuve Clicquot*, 73 USPQ2d at 1692. Although we may accord more or less weight to particular parts of the marks, our ultimate conclusion must rest on consideration of the marks in their entireties. *Stone Lion, LP v. Lion Cap.*, 746 F.3d 1317, 110 USPQ2d 1157, 1160-61 (Fed. Cir. 2014). As the Federal Circuit has declared:

“The commercial impression of a trademark is derived from it as a whole, not from its elements separated and considered in detail.” *Estate of P.D. Beckwith, Inc., v. Comm’r of Patents*, 252 U.S. 538, 545-46, 40 S. Ct. 414, 64 L. Ed. 705, 1920 Dec. Comm’r Pat. 471 (1920). Our predecessor court explained that “a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion.” *Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 1007 (CCPA 1981). That does not preclude consideration of components of a mark; it merely requires heeding the common-sense fact that the message of a whole phrase may well not be adequately captured by a dissection and recombination.... It is the mark in its “entiret[y]” that must be assessed. *DuPont*, 476 F.2d at 1361.

Juice Generation, 115 USPQ2d at 1676.

Applicant argues that the marks, taken in their entireties, differ in commercial impression, sound, and appearance. Even though it has disclaimed “SYSTEMS” from EVOLVE LIFE SYSTEMS, the disclaimed word must be considered, it argues. *See In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1050 (Fed. Cir. 2018) (“The public is unaware of what words have been disclaimed during prosecution of the trademark application at the PTO. ... Thus, the Board must consider the mark in its entirety, including the disclaimed portion.”) (internal citations and punctuation omitted). “SYSTEMS” is defined as “an organized set of doctrines, ideas, or principles usually intended to explain the arrangement or working of a systematic whole.”²⁸ Thus, Applicant argues, its EVOLVE LIFE SYSTEMS mark conveys the impression “that Applicant’s counseling and informational services help individuals develop self-improvement, self-fulfillment, and interpersonal communicational skills through an organized set of doctrines created by Applicant.”²⁹

In contrast, Registrant’s EVOLVED LYFE mark admits of different commercial impressions, Applicant argues: Its past tense “EVOLVED” could suggest, for example, that the individual is already developed in the laws of attraction and manifestation, or that Registrant’s life coaching services allow individuals to “manifest” and “attract” a developed way of living.³⁰ Moreover, the marks differ in

²⁸ Applicant’s brief, 6 TTABVUE 14, Merriam-Webster.com, April 14, 2021 Office Action ex. B at 28.

²⁹ Applicant’s brief, 6 TTABVUE 14.

³⁰ Applicant’s brief, 6 TTABVUE 15.

sound and appearance, as “Applicant’s mark is five syllables with the addition of the word ‘SYSTEMS,’ [w]hile Registrant’s mark is only three syllables and purposely misspells the word ‘LYFE’ as compared to Applicant’s proper spelling of ‘LIFE.’”³¹

The Examining Attorney responds that the marks share similar dominant terms, EVOLVE LIFE and EVOLVED LYFE, in the same order. *See Crocker Nat’l Bank v. Canadian Imperial Bank of Comm.*, 228 USPQ 689, 690 (TTAB 1986), *aff’d sub nom. Canadian Imperial Bank of Comm. v. Wells Fargo Bank, N.A.*, 811 F.2d 1490, 1 USPQ2d 1813, 1817 (Fed. Cir. 1987) (finding COMMCASH and COMMUNICASH confusingly similar). Continuing, the Examining Attorney argues that although Registrant’s EVOLVED LYFE mark uses the past tense EVOLVED, Applicant’s

³¹ *Id.* Applicant also introduced approximately 40 pairs of registered marks containing similar terms, one for use in connection with self-improvement services in Class 45 (as with Applicant’s mark) and the other for use in connection with life coaching in Class 41 (as with Registrant’s mark). For example, PLAY WITH POWER in Class 45 coexists with PLAY WITH HONOR in Class 41; DIAMOND RANCH ACADEMY with DIAMOND COACHING AND TRAINING; and INFINITE HOME RESOURCE with INFINITE SUCCESS. Applicant argues that “The coexistence of the above marks on the Principal Register demonstrates that even where marks registered in connection with personal development services in Classes 45 and 41 share the same dominant terms and similar commercial impressions, even the USPTO believes that consumers are unlikely to be confused.” Nov. 18, 2021 Response to Office Action and ex. AM, at 17-33, 36-125; Applicant’s brief, 6 TTABVUE 8.

We do not rely on this evidence. “In the final analysis, when determining whether a mark is eligible for registration, each application must be considered on its own record. *In re Cordua Rests., Inc.*, 823 F.3d 594, 600, 118 USPQ2d 1632, 1635 (Fed. Cir. 2016) (“[The Federal Circuit], like the Board, must evaluate the evidence in the present record to determine whether there is sufficient evidence [to support a refusal]....”); *In re Shinnecock Smoke Shop*, 571 F.3d 1171, 91 USPQ2d 1218, 1221 (Fed. Cir. 2009) (“Applicant’s allegations regarding similar marks are irrelevant because each application must be considered on its own merits.”); *In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) (“Even if some prior registrations had some characteristics similar to Nett Designs’ application, the [US]PTO’s allowance of such prior registrations does not bind the [Trademark Trial and Appeal] Board or this court.”). *In re Sibony*, 2021 USPQ2d 1036, *8 (TTAB 2021).

various interpretations are mere conjecture, as there is no evidence that consumers viewing the mark would reach the same interpretations.³² And even though LYFE is misspelled, it is the phonetic equivalent of LIFE, creating the same sound when pronounced. *See In re Quik-Print*, 616 F.2d 523, 205 USPQ 505, 507 n.9 (CCPA 1980) (finding no legally significant difference “between “quik” and “quick.”); *In re Carlson*, 91 USPQ2d 1198, 1203 (TTAB 2009) (URBANHOUSING perceived as equivalent of URBAN HOUSING, “rather than as including the separate word ZING”). The disclaimed matter—in Applicant’s mark, “SYSTEMS”—is typically less significant. *See In re Detroit Athletic*, 128 USPQ2d at 1049-50.³³

The Examining Attorney contends that not only do the additional two syllables in Applicant’s mark derive from this disclaimed wording, Applicant does not show that the disclaimed wording alters the commercial impression or meaning of its mark.³⁴ If anything, “consumers are likely to believe that the Registrant ... has begun offering similar services under another iteration of its registered mark and that this iteration pertains to ... an organized set of ideas, principles, or ‘systems’ for life coaching.”³⁵ As such, the minor differences between the marks do not detract from their overall similarities, the Examining Attorney concludes.³⁶

“Ordinarily, these similarities, combined with the [legal] identity in the services, would point to a finding of likelihood of confusion.” *Broadway Chicken* 38 USPQ2d at

³² Examining Attorney’s brief, 8 TTABVUE 8.

³³ Examining Attorney’s brief, 8 TTABVUE 7-9.

³⁴ Examining Attorney’s brief, 8 TTABVUE 6-8.

³⁵ Examining Attorney’s brief, 8 TTABVUE 8.

³⁶ Examining Attorney’s brief, 8 TTABVUE 9.

1566. But here, given the plethora of third-party uses of the term EVOLVE, a substantial number in combination with LIFE, we find that consumers are less likely to view Applicant's mark as "another iteration" of Registrant's mark, and more likely to view it as an other, separate source in a crowded field of life coaching and counseling. Registrant's use of the past tense bespeaks its particular approach: that of an actualized life realized or manifested through the will, whereas Applicant's mark, with its emphasis on SYSTEMS, bespeaks a more methodical and orderly approach by which one gradually and incrementally improves one's life. Put another way, Registrant's mark connotes the peak or mountaintop; Applicant's mark connotes the ascent or journey to the top. *Cf. ProMark Brands v. GFA Brands*, 114 USPQ2d at 1245 ("SMART ONES,' although originally connoting a low-fat food item, now connotes the health-conscious consumer on a journey to a healthier lifestyle.").

These minute differences ordinarily might not suffice to distinguish marks of average conceptual and commercial strength. But given the weakness—especially the commercial weakness—of marks containing EVOLVE in combination with LIFE, "we find that purchasers are able to distinguish among various [similar] marks by looking to other elements of the marks." *Knight Textile v. Jones Inv.*, 75 USPQ2d at 1316. In this case, such other elements are the past tense EVOLVED and the unique spelling of LYFE in the cited mark, and the suffix SYSTEMS in Applicant's mark. Even though SYSTEMS is disclaimed in Applicant's mark as generic or at best descriptive, (just as "life" is disclaimed in the cited mark) it nonetheless contributes to the overall commercial impression created by Applicant's mark. *In re Inn at St. John's, LLC*, 126 USPQ2d 1742, 1748 (TTAB 2018) *aff'd* 777 F. App'x 516 (Fed. Cir. 2019); *In re Soc'y*

of Health and Physical Educators, 127 USPQ2d 1584, 1587 (TTAB 2018) (“However, there can be no hard and fast rule, because even generic and descriptive matter may contribute to the commercial impression of a mark in certain circumstances.”).

Taken in their entirety, the marks convey sufficiently different commercial impressions, and the first *DuPont* factor favors a finding of no likelihood of confusion.

D. Conclusion

“This is a very close case.” *Broadway Chicken* 38 USPQ2d at 1566. Varying weights may be assigned to each *DuPont* factor depending on the evidence presented. “[T]he weight afforded to each factor depends on the circumstances. ... Any single factor may control a particular case.” *Stratus Networks, Inc. v. UBTA-UBET Commc’ns Inc.*, 955 F.3d 994, 2020 USPQ2d 10341, *3 (Fed. Cir. 2020). Here, although the services are legally identical, the ubiquity of EVOLVE[D] and LIFE in the field and the differing wording in the marks outweigh the similarity of services. Having considered the evidence of record as it pertains to the relevant *DuPont* factors, we find that confusion is unlikely to result from contemporaneous use of Applicant’s and Registrant’s marks. 15 U.S.C. § 1052(d). “Of course, our decision in this ex parte case would not preclude us from reaching a different result, on a different record, in any opposition or cancellation proceeding which might be brought by registrant with respect to the subject matter of this application.” *Broadway Chicken*, 38 USPQ2d at 1566 n.18.

Decision: The refusal to register Applicant’s mark EVOLVE LIFE SYSTEMS is reversed.